IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5303 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S M PANDYA

Versus

GENERAL MANAGER(PERSONAL)

Appearance:

MR BP GUPTA for MR YN OZA for Petitioner

MR KM PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 15/09/2000

ORAL JUDGEMENT

The petitioner, a former Branch Manager of the respondent Bank, challenges the order of his dismissal made on 30th July, 1986 and the orders of the appellate and review authorities confirming his dismissal, which are at Annexures "A", "B" and "C" to this petition.

2. The petitioner had faced a Departmental enquiry on very serious charges of misconduct. The allegations were that while he was working as a Branch Manager at the Godhra Branch of the Bank, he had accepted bogus and fictitious quotations and bills and receipts of suppliers of goods in collusion with one Mr. A.A. Mogul, who managed to supply bogus quotations to the borrowers and that the delinquent issued solvency certificates by accepting illegal gratification from the beneficiaries of such certificates. It was also alleged that the delinquent unauthorisedly accommodated parties by allowing overdrafts and in order to conceal the facts from the higher authorities funds were transferred from one account to another current deposit account and bogus vouchers were prepared without obtaining cheques from the concerned parties and further that the entries effected were reversed after 3 days of the closing of entries. It was also alleged that the delinquent destroyed loan applications received through the District Industries Centre, Godhra when disbursement of loan did not materialise and further that he pasted white paper on the ledger folio on which the said borrowers loan account was opened and intentionally passed wrong entries to reverse the loan account debited directly crediting Cottage Industries loan account in the day book, circumventing the banking procedure.

3. It appears that during the enquiry, the management had submitted a list of 52 documents and 7 witnesses were examined. The delinquent did not examine any witness but gave his defence statement and final written arguments were given by his next friend on 26th May, 1986, which were taken on record by the Enquiry Officer as noted by him in paragraph 5 of his report. After a detailed appraisal of the evidence on record, the Enquiry Officer came to a conclusion that the delinquent had disbursed loans to 16 applicants to the tune of Rs. 2.90 lakhs without ascertaining the end use of the finance. It was held that the evidence established that the suppliers of the goods shown in Annexure-II were not genuine. The Enquiry Officer came to a finding that the defence had failed in proving the fact that the parties were real and genuine trading concerns at given addresses or registered as traders. It was found that the bills, invoices, quotations and receipts as were of such suppliers were all bogus and payments were disbursed without securities. It was also proved that the delinquent allowed overdrafts for longer periods to several parties and in order to suppress the transactions, he unauthorisedly transferred the funds

from other current account and adjusted them with an ulterior intention of not reporting the same in closing statements. It was further found by the Enquiry Officer that the delinquent had destroyed the borrowers' loan applications received through District Industries Centre, Godhra when disbursement of loan did not materialise and that he had pasted white paper on the ledger folio on which the borrower's loan account was opened and intentionally posted wrong entries to reverse the loan account debited, directly crediting Cottage Industries' loan account in the day book, circumventing the banking procedure. These facts which were deposed to, were not challenged in the cross-examination as noted by the Enquiry Officer. It was also held that the charge of taking loans from customers was also established. From the deposition of the customers it was further proved that the charge of issuing solvency certificates of huge amounts and not keeping copies/relevant records at branch level as well as the charge of illegal gratification were proved.

4. The Enquiry Officer, considering the defence of the delinquent, held that the charge that the delinquent was not authorised to sanction loans was held to be not proved on the ground that the sanctioned advices were accepted by the Regional office. The charge that the delinquent was coming late and remained absent without leave were also held to have not been proved.

5. On the basis of the said enquiry report dated 15th July, 1986, the Disciplinary Authority made an order on 30th July, 1986, dismissing the delinquent from service. The Disciplinary Authority concurred with the Enquiry Officer in holding that the delinquent was guilty of the charges which were proved against him after going through the enquiry proceedings, enquiry report, the exhibits produced during the enquiry as well as other connected papers. It was held by him that looking to the nature and gravity of the misconduct proved against the delinquent, he was of the opinion that the ends of justice would be met by imposing penalty of dismissal on him for each of the charges proved against him.

6. The delinquent appealed against his order of dismissal, which was served on him alongwith the enquiry report and the Appellate Authority by its order dated 13.4.1987, after going through the proceedings of enquiry, findings of the enquiry authority, order passed by the Disciplinary Authority and the appeal memo filed as well as other connected papers, formed an opinion that the delinquent was rightly found guilty and there was no

reason to interfere with the order of the Disciplinary Authority. It was also held that the penalty imposed on the delinquent was commensurate with the misconduct committed.

7. Thereafter, a review petition was preferred before the Reviewing Authority (which is said to be an authority higher than the Appellate Authority) and the Reviewing Authority who is the Chairman and Managing Director of the Bank, by his order dated 20.5.1987, after going through the records as well as various contentions raised by the delinquent in his review petition held that there was no reason to interfere with the orders of the Appellate Authority or with the quantum of punishment of dismissal imposed on the delinquent.

8. The learned Counsel appearing for the petitioner contended that the copy of the enquiry report was not supplied to the petitioner before passing of the order of dismissal nor was he given an opportunity to meet with the findings which were given against him in the enquiry report. It was argued that the Disciplinary Authority did not give any personal hearing to the delinquent, nor any show cause notice so as to enable the delinquent to assail the enquiry report or to have his say on the quantum of punishment. It was also argued that the order made by the Appellate Authority was a non-speaking order and that he had merely relied upon the finding of the Enquiry Officer who was influenced by the extraneous factor of taking into consideration the past record. It was finally contended that the punishment of dismissal imposed on the delinquent was wholly disproportionate and that the Enquiry Officer had not taken note of the fact that some of the amount stood recovered and criminal case was already pending.

9. The learned Counsel appearing for the respondent Bank on the other hand supported the findings given by the Enquiry Officer as well as the order of dismissal from service and those confirming the dismissal order in appeal. When it was pointed out to him that the Enquiry Officer did not take into account the written arguments which admittedly were received on the record from the delinquent, the learned Counsel contended that no such contention was raised either before the Appellate Authority or even in the memo of this petition and that in any event there was no prejudice caused to the delinquent because the Enquiry Officer had given cogent reasons in support of his findings after taking note of the written arguments and the defence statement. It was submitted that the delinquent, through his next friend,

was given ample opportunity to cross-examine the witnesses and that after an elaborate enquiry very serious charges of misconduct were established against the delinquent. He also argued that there was no reason to infer that the written arguments were not considered by the Appellate Authority, who had in terms stated that all the connected papers were taken into consideration. He submitted that on going through the written arguments it was evident that no prejudice was caused to the delinquent by not reproducing them in the enquiry report or in the orders of the Disciplinary Authority and the Appellate Authority.

10. Relying upon the decision of the Supreme Court in State of Bikaneer & Jaipur and ors. Vs. Prabhu Dayal Grover, reported in (1995) 6 SCC 279, it was contended that in case of concurrent findings it was not obligatory on the Disciplinary Authority to give any elaborate reasons.

11. The learned Counsel for the appellant has raised more or less technical contentions not saying much on the merits of the case. The charges which were levelled against the delinquent were of a very serious nature and according to the Enquiry Officer, they were established on the basis of the oral as well as documentary evidence. The charges of preparation of documents of spurious transactions and names of parties, of creation of false credit vouchers as well as of falsifying the record of the Bank by pasting a white paper on the ledger folio and making false entries thereon, are not only misconduct but they can be subject matter of grave offences under the Indian Penal Code, such as offences of committing forgery of valuable securities as well as falsification of accounts, use of forged documents etc., some of which entail very severe punishments under the Indian Penal Code. It is stated that the prosecution is still pending against the delinquent. In this view of the matter it can never be said that the punishment of dismissal imposed on the delinquent was grossly disproportionate.

12. The contention that a copy of the enquiry report was not supplied to the petitioner before the order of dismissal was made, will not help the petitioner in view of the decision of the Constitution Bench in Managing Director, ECIL, Hyderabad etc. Vs. B. Karunakar etc. reported in AIR 1994 SC 1074, it is laid down in para 7 of the judgement that since the decision in Mohd. Ramzan Khan's case made the law expressly prospective in operation, the law laid down there will apply only to those orders of punsihment which are passed by the

disciplinary authority after 20th November, 1990. It was in terms held that no order of punishment passed before that date would be challengable on the ground that there was failure to furnish enquiry report to the delinquent. In the instant case the dismissal order was made much prior to 20th November, 1990, on 30th July, 1986 and therefore, the ground that the enquiry report was not supplied prior to the making of the dismissal order will not be available to the petitioner.

13. The contention that the appellate order is a non-speaking order cannot be accepted because the Appellate Authrity has in terms recorded that it had gone through the proceedings of the enquiry, findings of the Enquiry Officer, order passed by the Disciplinary Authority, the appeal memo filed by the delinquent and all other connected papers and on persual of the same it did not find any reason to interfere with the order of the Disciplinary Authority. The Disciplinary Authority in turn had agreed with the reasoning and findings of the Enquiry Officer and therefore, it was unnecessary for it to reproduce, in the dismissal order all the reasons given by the Enquiry Officer for reaching the findings, in the order of dismissal. The Disciplinary Authority had in terms stated that after going through the enquiry proceedings, the report, the exhibits and all connected papers the said authority concurred with the view of the enquiring authority and looking to the nature and gravity of the misconduct, he was of the opinion that the ends of justice will be met by imposing the penalty of dismissal.

14. The only aspect that now remains is the contention canvassed for the first time at the hearing of this petition that the written arguments submitted by the delinquent through his next friend on 25th May, 1986 were not considered by the Disciplinary Authority or the Appellate Authority. If the arguments were really not considered, then the petitioner ought to have made his grievance before the Appellate Authority. It is not pointed out from any material during the course of the arguments that any such contention of the written arguments not having considered by the Appellate Authority or the Disciplinary Authority was ever raised. In fact, the order of the Disciplinary Authority and the order of the Appellate Authority clearly indicate that the entire record were perused and since the written arguments were on record, there is no reason to infer that the Disciplinary Authority or the Appellate Authority had not considered the same. The fact that the written arguments were accepted was clearly mentioned in the report of the Enquiry Officer in paragraph 5, as

noted above and ordinarily the Disciplinary Authority as well as the Appellate Authority would have looked into those papers also. There is therefore absolutely no reason to infer that the relevant record which was placed before the Disciplinary Authority as well as before the Appellate Authority and the Reviewing Authority was not perused by them or that they did not apply their mind to the record of the case including the written arguments which were accepted by the Enquiry Officer. The written arguments represented whatever the delinquent wanted to say in the matter and since the Disciploinary Authority, Appellate Authority as well as the Reviewing Authority had applied their mind to all the documents including the written arguments, it cannot be said that the petitioner's contentions were not taken into account. Having regard to the facts and circumstances of the case as well as to the aspect that higher authorities have applied their mind and concurred with the findings of fact on the charges of serious misconduct reached by the Enquiry Officer, there is no scope for any interference by this Court. The petition is therefore rejected. Rule is discharged with no order as to costs.

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